*The Hon'ble Sri Justice V.V.S.RAO

+Writ Petition No.13521 of 2004

% 23.9.2004

£ D. Balamurali, S/o. R. Daraswamy, aged 20 years, Occ: Student,
R/o. H.No.13-5-531/5F, Tatanagar, Tirupathi presently residing at

H. No.13-6-500/44/12-A, Peddakapu Layout, Tirupathi,
Chittoor District.

..... PETITIONER

AND

$ 1 N.T.R. University of Health Sciences, Vijayawada Krishna District,
represented by its Registrar.
2 The Commissioner for Social Welfare, Govt. of A.P., Hyderabad.
(R2 is impleaded as per Court Order dated 20-08-2004 in WPMP 18904/2004)
.....RESPONDENTS

! For the petitioner …Mr. V. Ramachandar Rao

^ For the Respondent No.1 …Dr. Y.Padmavathi, S.C.

For the Respondent No.2 … None appeared

<Gist:

>Head Notes:

? Cases Referred

1. (1994) 1 SCC 359

2. (1996) 3 SCC 576 (para 15)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.13521 of 2004

Between:

D. Balamurali, S/o. R. Daraswamy, aged 20 years, Occ: Student,
R/o. H.No.13-5-531/5F, Tatanagar, Tirupathi presently residing at

H. No.13-6-500/44/12-A, Peddakapu Layout, Tirupathi,
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.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ order or direction particularly one in the nature of Writ of Mandamus declaring the Impugned Registration-cum-Verification form issued to the EAMCET-H.T. No.4205302 pertaining to the petitioner with EAMCET RANK 2535 on 22-7-2004 as arbitrary, illegal, discriminatory in nature besides violative of Rule of Reservation and contrary to Articles 14 and 16 of the Constitution of India and also contrary to the Regulations prescribed for the counselling to be held for admission into I year M.B.B.S. and B.D.S. courses in A.P. State by Respondent University and set aside the same and consequently direct the respondent University to consider the petitioner's case as local candidate with B.C. (D) category reservation under S.V. University Local area in II Phase Counselling for the I year admission of above Courses by the Respondent University in the interest of Justice.

Counsel for the Petitioner: MR.V. RAMACHANDAR RAO

Counsel for the Respondent No.1: DR.Y.PADMAVATHI

Counsel for the Respondent No.2: G.P. FOR SOCIAL WELFARE

The Court made the following:

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.13521 OF 2004

-

ORDER:

The petitioner herein appeared for Engineering, Agricultural and Medical Common Entrance Test, 2004 (EAMCET-2004). He obtained rank 2535. Pursuant to the notification issued by N.T.R. University of Health Sciences, the first respondent herein, the petitioner submitted application claiming admission in one of the seats reserved for BC-D category. The petitioner claims that he belongs to Yadav (Golla) caste and therefore he is entitled to seek reservation in BC-D category. After verifying his application, the first respondent issued a registration-cum-verification form informing that as the petitioner is migrant child from other states, he is not eligible for reservation under BC quota in Andhra Pradesh. Assailing the same, the petitioner filed the writ petition seeking a declaration that the registration-cum-verification form issued by first respondent is illegal and arbitrary. He also seeks a direction to respondents to consider the petitioner's case as a local candidate belonging to BC-D category for second phase of counselling for admission into M.B.,B.S.,/B.D.S. course for the year 2004-2005.

The case of the petitioner, in brief is as follows. The petitioner's father is working as Pointsman in Southern Railway at Arsikere Railway Station in the State of Karnataka. The petitioner and his parents are now residing in Bangalore. The petitioner claims that he was born in Chittoor on 25.06.1984 at the residence of his maternal grandfather, who after retirement in Police Department of Andhra Pradesh settled down in Tirupathi in Chittoor District. The petitioner also alleges that he was brought up by his grandfather and that he studied from L.K.G. to X class in English medium with Telugu as second language during 1987 to 1993 at Sri Mahalakshmi English Medium School, Tirupathi. Thereafter, he studied two year intermediate (Bi.P.C.,) during the academic year 1999-2001 at Vikas Junior College, Tirupathi. He also states that the Mandal Revenue Officer, Tirupathi (Urban) has issued a Community Certificate dated 28.06.2003 showing that he belongs to Yadava caste, which is mentioned at Serial No.33 under BC-D category. He also alleges that the certificate issued by the Mandal Revenue Officer is valid as per the provisions of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (hereafter called, the Act) and Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Issue of Community, Nativity and Date of Birth Certificates Rules, 1997 (hereafter called, the Rules) and that he cannot be treated as a person under the migration category from other states.

This Court admitted the writ petition on 09.08.2004 and directed the University of Health Sciences to file counter affidavit. Subsequently, this Court by order made in W.P.M.P.No.18904 of 2004 dated 20.08.2004 ordered to implead the Commissioner for Social Welfare, Government of Andhra Pradesh, second respondent herein. Along with the writ petition, the petitioner filed two miscellaneous applications being W.P.M.P.Nos.17318 and 17319 of 2004. In the first application, he prayed for a direction to the first respondent to consider the petitioner's name in second phase counselling for admission into first year M.B.,B.S.,/B.D.S. course and in the second application, he prayed for a direction to respondent University to reserve one seat. These applications came before this Court today. As submissions for the purpose of interlocutory applications and the main writ petition being the same, the writ petition was heard finally and is being disposed of with the consent of the learned counsel for the petitioner and the learned Standing Counsel for University of Health Sciences.

In the counter affidavit filed by the first respondent, it is stated that during the selections when the petitioner turned came, the Verification Officers from the Backward Classes Welfare Department of Government of Andhra Pradesh scrutinized his application. The State Officers observed that mother tongue of the petitioner is Tamil and he is in possession of the Community Certificate by the authorities of Karnataka State as well as Mandal Revenue Officer, Tirupathi. Therefore, they observed that in the case of migration from other States, the migrant children are not eligible for reservation under BC quota in Andhra Pradesh and therefore his claim was rejected. Counter affidavit also refers to Memo No.30870/J1/90-2/09.05.1991, wherein the Government issued a clarification to the effect that even if a particular caste exists in the list of backward classes of both the

States, the children belonging to other different state cannot be given the benefit of reservation in the State of Andhra Pradesh.

Learned counsel for the petitioner Sri V.Ramchandar Rao vehemently contends that the certificate issued by the Mandal Revenue Officer, Tirupathi (Urban) dated 28.06.2003 is valid and the same is binding on the University. Secondly, he would urge that even if any doubt exists by reason of Section 21 of the Act and Rule 19 of the Rules, the first respondent is bound to give provisional admission to the petitioner and then enquire into the matter. According to the learned counsel at the stage of counselling, the petitioner's right to seek admission under BC-D cannot be defeated. **Per contra**, learned Standing Counsel for N.T.R. University of Health Sciences, Dr.Y.Padmavathi, based on the counter affidavit filed by the Registrar of University submits that as per the Memo dated 09.05.1991 issued by the Government of Andhra Pradesh, children of migrants from other States cannot be given the benefit of reservation even though a particular caste existed in the list of backward classes in both the States. Learned counsel therefore submits that the case of the petitioner cannot be considered under BC-D category.

In the background of facts and in the light of rival submissions, the point that arises for consideration is whether the first respondent was justified in rejecting the application of the petitioner for admission to first year M.B.,B.S.,/B.D.S. courses for the academic year 2004-05 in one of the seats reserved for BC-D category?

There is no dispute that as per the Rules regulating admissions into undergraduate medical and dental provisional courses in State of Andhra Pradesh, the Vice-chancellor of the first respondent University is competent authority to make admissions. There is no dispute that while making admissions, the competent authority has to give due effect to Rule of Reservation of Seats for Scheduled Castes, Scheduled Tribes and Backward class communities. So as to claim reservation, as person belonging to backward class communities, a candidate is required to produce integrated community certificate prescribed by the Government and issued by the competent revenue authority as per the Act and the Rules. When any person claims reservation, it is the duty of the competent authority to verify whether such claim is genuine. So as to avoid any criticism that the University authorities may not have wherewithal, the University is adopting the method of ensuring the presence of the Officers from the Departments of SC/ST/BC Welfare. The opinion given by these Officers with regard to a claim of a candidate allegedly belonging to reserved classes, should be respected by the University authorities though such opinion may not be final, having regard to various provisions of the Act and the Rules. The University therefore was justified in rejecting the claim of the petitioner for admission to first year M.B.,B.S.,/B.D.S. as BC candidate.

Learned counsel for the petitioner placed reliance on the Community, Nativity and Date of Birth Certificate dated 28.06.2003 issued by the Mandal Revenue Officer, Tirupathi (Urban). Along with the writ petition, the petitioner has annexed the community certificate dated 17.09.2003 issued by Tahsildar, Arsikere in the State of

Karnataka as well as the certificate dated 23.07.2004 issued by Tahsildar, Bangalore. These two certificates are issued in Form 'E' for the purpose of education showing that the petitioner belongs to Yadava caste (category I) of the Backward Classes. The certificate issued by the Mandal Revenue Officer, Tirupathi (Urban) and the certificates issued by Tahsildar, Arsikere and Bangalore would show that Yadava caste is a recognized Backward Class in the State of Andhra Pradesh as well as in the State of Karnataka. As the petitioner admits that his father is a railway employee residing in Bangalore, it can be presumed that the petitioner belongs to Yadava community of Karnataka State. Whether the same can be treated as a recognized backward class in the State of Andhra Pradesh. The answer must be definitely in the negative.

Sections 2(a) and 2(c) of the Act define the expressions "backward classes" and "competent authority" respectively. They read as under.

(a) "backward classes" means, any socially and educationally backward classes of citizens recognised by the Government for purposes of clause (4) of Article 15 of the Constitution of India;

(c) "competent authority" means, any officer or authority authorised by the Government by notification to perform the functions of the competent authority under this Act, for such area or for such purposes as may be specified in the notification;

Sections 3 and 4 deals with procedure for making application and issue of community certificate. These two Sections read as under:

3. Application a Community Certificate:- (1) Any person belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes may in order to claim the benefit of any reservation provided to such Castes, Tribes or Classes either for any public appointment or for admission into any educational institution in the State or outside the State for the students of the State or any other benefit under any special provisions made under clause (4) of Article 15 of the Constitution of India or for the purpose of contesting for elective post in any local authority or for elective posts in the Co-operative Institutions, make an application in such form and in such manner as may be prescribed to the competent authority for the issue of a community certificate.

(2) Any person belonging to a Scheduled Tribe may, for the purpose of claiming any benefit or protection meant for Scheduled Tribes under any notification, direction or regulation made under the Fifth Schedule to the Constitution of India or under any Act, Rule, Regulation or Order for the time being in force in the Scheduled Areas, Make an application in such form and in such manner as may be prescribed to the Competent authority for the issue of community certificate.

Explanation:- For the purposes of this section and Section 13, "Scheduled Areas" means the areas as defined in paragraph 6 to the Fifth Schedule to the Constitution.

4. Community Certificate to be issued by competent authority:- (1) The Competent Authority may, on an application made to it under Section 3, satisfy itself about the genuineness or otherwise of the claim made therein and thereafter issue a community certificate within such period and in such form as may be prescribed or reject the application for reasons to be recorded in writing. A certificate in regard to community issued by any person, officer of authority other than the competent authority shall be invalid.

(2) Before the issue or rejection of a certificate under sub-sec.(1) the competent authority shall follow such procedure as may be prescribed.

All backward classes are not recognized as backward classes for the purpose of the Act and the Rules. As per Section 2 (a) of the Act, backward classes means socially and educationally backward classes of citizens recognized by the Government for the purposes of Clause (4) of Article 15 of the Constitution of India and as per Section 2(e), the Government means the Government of Andhra Pradesh. Further under Section 3(1) of the Act, a competent authority may receive an application for issue of a community certificate either for any public employment or for admission into any educational institution in the State or outside the State only for the students of the State (See Section 3(1)). Therefore, a person who belongs to backward class as recognized by the Government of Andhra Pradesh is alone entitled to obtain a community certificate from the competent authority. Indeed no competent authority can give a certificate to a person belonging to other State as if such person belongs to backward class recognized by the State of Andhra Pradesh. It appears some time in 1990, the Commissioner of Backward Classes Welfare sought clarification from the Government of Andhra Pradesh whether the candidates from other States claiming backward class status in their home States may be given admission in professional courses under EAMCET in the State of Andhra Pradesh on the ground of similarity in nomenclature of a particular caste in the State of Origin and State of Migration. The Government of Andhra Pradesh appears to have considered the same with reference to the Court cases and the various guidelines issued by the Government, and issued Memo No.30870/J1/90-2 dated 09.05.1991. It would be apt to extract the entire Memo.

COPY OF:

GOVERNMENT OF ANDHRA PRADESH

SOCIAL WELFARE (J) DEPARTMENT

Memo.No.30870/J1/90-2 Dt.09.05.1991

Sub: B.C.W.D.-Social status verification – Claiming as Backward Class candidates for

admission in Professional Courses under EAMCET-1990 – Persons residing in Andhra Pradesh belonging to other states – Certain instructions – Issued.

Ref:- 1. From the CBCW.Lr.Rc.No.E2/8469/90, dt.27.10.190.

2. From the CBCW, Lr.Rc.No.E2/8469/90, dt.15.11.90, 27.11.90, 30.11.90

3. From the CBCW, Lr.Rc.No.E2/4589/90, dt.27.12.90.

4. From the CBCW, Lr.Do.No.E2/8762/90, dt.7.1.91.

5. From the CBCW, Lr.Rc.No.E2/767/91, dt.22.1.91.

6. From the CBCW, D.O.Lr.No.8764/90,dt.14.2.91.

7. From the CBCW, D.O.Lr.No.8762/90/E2, dt.14.2.91.

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The Commissioner of B.C.Welfare in his references cited has sought a clarification whether the candidates from other states claiming Backward Class status in their Home States may be given admission in Professional Courses under EAMCET in this State on the ground of similarity in nomenclature of a particular caste in the state of origin and state of migration.

The matter has been examined at length with reference to the Court cases, guidelines of Government of India in respect of Scheduled Castes, Scheduled Tribes and other relevant material. It has been decided that it is not desirable to extent the benefit of reservation to the children of migrants by virtue of appointment etc., claiming under Backward Class quota eventhough the particular caste existed in the list of Backward Classes of both the States i.e., state of origin and state of migration, as otherwise the actual members of Backward Classes of this state will be deprived of their legitimate right of getting a seat in the Educational Institutions of this State.

The Commissioner of Backward Classes Welfare is requested to take action accordingly under intimation to Government.

V.GOVINDARAJAN

SECRETARY TO GOVERNMENT

To

The Commissioner of Backward Classes Welfare, A.P., Hyderabad.

// forwarded by order //

sd/-

Desk Officer

In view of the Government Memo, the first respondent was justified in rejecting the claim of the petitioner for admission into first year M.B.,B.S.,/B.D.S course in BC-D category. It is also now well settled that Scheduled Castes recognized as such in one State cannot claim reservation in other State. The cases decided by the Supreme Court have laid down such principle for the reason that the President of India enumerates the Castes, Tribes, Communities etc., as Scheduled Castes with reference to each State having regard to their socio economic position in the particular State.

A reference may be made to **Palghat Jilla Thandan Samudhaya Samrakshna Samithi v State of Kerala**, wherein the Supreme Court has considered the question whether the State can modify the effect of the Constitution (Scheduled Castes) Order, 1950. While answering the question in the negative the Apex Court ruled:

> These judgments leave no doubt that the Scheduled Castes Order has to be applied as it stands and no enquiry can be held or evidence let in to determine whether or not some particular community falls within it or outside it. No action to modify the plain effect of the Scheduled Castes Order, except as contemplated by Article 341, is valid.

Yet again, it was held:

> It is not for the State Government or for this Court to enquire into the correctness of what is stated in the report that has been made thereon or to utilize the report to, in effect, to modify the Scheduled Castes Order. It is open to the State Government, if it so deems proper, to forward the report to the appropriate authority to consider whether the Scheduled Castes Order needs amendment by appropriate legislation. Until the Scheduled Castes Order is amended, it must be obeyed as it reads and the State Government must treat Thandans throughout Kerala as members of the Scheduled Castes and issue community certificates accordingly.

I n **Nityanand Sharma v State of Bihar**, a question arose before the Supreme Court as to whether a Court can declare a particular tribe to be Scheduled Tribe under the Scheduled Castes and Scheduled Tribes Order, 1950, as amended by Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976. It was held that the Scheduled Tribe Order cannot be varied except by Parliament and that a Court cannot give any declaration with regard to social status of a person who claims to belong to one of the listed Scheduled Tribes.

Therefore, I see no reason to apply the principles laid down by the Supreme Court with reference to Scheduled Castes as well. The petitioner obtained the certificates from the Tahsildar of Arsikere as well as Bangalore, which would clinchingly show that he belongs to Yadav caste of Karnataka State and it was improper for the Mandal Revenue Officer, Tirupathi (Urban) to issue the community certificate dated 28.06.2003. Based on the said certificate, which is illegal and without authority, the petitioner cannot get any benefit.

The writ petition is devoid of merits and is accordingly dismissed.

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(V.V.S.RAO,J)

23.09.2004.

pln

Note: LR copy be marked.

(By order)

pln

To

(One fair copy to the Hon'ble Mr.Justice V.V.S.RAO (for his Lordships kind perusal)

1 The Registrar, N.T.R. University of Health Sciences, Vijayawada

Krishna District.
2 The Commissioner for Social Welfare, Govt. of A.P., Hyderabad.
3 8 LR copies.

4 The Under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

5 The Secretary, A.P. Advocates Association Library, High Court

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6 Two CCs to G.P. for Social Welfare, High Court of A.P., Hyderabad

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7 2 CD copies.